

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Chapter VIII, Rule 32(2) (b)
Description of case

Criminal Appeal No. 821 of 2001
(Old No. 2097/1988)

Baraf Singh alias Barfu
S/o Shri Ghurku Singh
R/o Village Ratoli, P.S. Khandogi,
Tehsil Pratapnagar,
District Tehri Garhwal.

..... Appellant

Versus

The State of Uttaranchal Respondent

Mr. Rajendra Kotiyal, Advocate for the appellant.
Mr. A. Rab, Addl. Govt. Advocate assisted by Mr. M.A. Khan,
Brief Holder for the respondent-State..

Date of decision: 9th May, 2005

For the approval of:-

Hon'ble Mr. Justice Irshad Hussain
Hon'ble Mr. Justice Prafulla C. Pant

- Whether the order/judgment should be sent to
the reporters for reporting? (Yes)

- Whether the reporters be allowed to see the
judgment? (Yes)

Reserved Judgment

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Coram: Hon'ble Irshad Hussain, J.
Hon'ble Prafulla C. Pant, J.

Dt: 9th May, 2005.

[Per Hon'ble Prafulla C. Pant, J.]

This appeal, preferred under Section 374 of the Code of Criminal Procedure, 1973 (for brevity hereinafter Cr.P.C.), is directed against the judgment and order dated 01.09.1988 passed by learned Sessions Judge, Tehri, in Sessions trial No. 31 of 1987 whereby, the appellant Baraf Singh has been convicted under Section 302 of the Indian Penal Code, 1860 (for brevity hereinafter I.P.C.) and sentenced to undergo life imprisonment.

2. I brief, prosecution story is that P.W. 3, Asharh Singh (informant & step brother of the deceased), resident of village

Ratoli, on 12.08.1987 at about 09:00 P.M., lodged the First Information Report (Ext. A -1) with patti patwari Khandogi (District Tehri) informing that Rai Singh of his village told him that Gunda @ Govind Singh (P.W. 1), resident of village Andethi, of village Andethi had seen appellant Baraf Singh quarrelling with a man at about 06:00 P.M. and thereafter appellant had also been seen hitting said person with stones. On this Rai Singh alongwith Bhadu Singh (P.W. 2) and Gunda @ Govind Singh (P.W. 1) went there to see as to who was the victim, and on reaching there they found that Vikram Singh was lying dead. These witnesses found that there were injuries on the person of the deceased and there was bleeding from the injury on his head. Meanwhile, appellant Baraf Singh ran downwards on to the road. On the basis of said First Information Report lodged by Asharh Singh (P.W. 3), check report (Ext. A -3) was prepared by patti patwari, Khandogi, who registered the crime under Section 302 of the I.P.C. against the appellant Baraf Singh (in Uttaranchal hills in certain areas Patwaris are given police powers). An entry was made by the patwari in the general diary (extract of which is Ext. A -4) at serial number 13. It appears that on 13.08.1987, the patwari took the dead body of Vikram Singh in his possession and prepared the inquest report (Ext. A -5). He further prepared diagram of the dead body (Ext. A -6), letter to the Chief Medical Officer, Tehri, (Ext. A -7) requesting for postmortem examination and other necessary papers on the same day i.e. on 13.08.1987. Shri I.D. Dangwal (P.W. 6), Patwari / Investigating Officer also prepared site plan (Ext. A -9) on the same day i.e. 13.08.1987. He further collected the blood stained soil and prepared the memo (Ext. A -10) on that day. Appellant was taken into custody on the very day i.e. 13.08.1987.

3) Dr. R.K. Pant (P.W. 5) conducted the postmortem examination on 14.08.1987 at about 10:00 A.M. on the dead body of Vikram Singh and prepared postmortem report (Ext. A –2). The Medical Officer observed at the time of postmortem examination in the aforesaid report that the dead body was of an average built person aged 28 years. The Doctor found following ante mortem injuries at the time of autopsy:-

- i) Lacerated wound 3 cm X 1 cm on occipital prominence, bone deep with fracture of occipital bone.***
- ii) Abrasion 3 cm X 0.5 cm on right side of abdomen.***
- iii) Bleeding from left ear, nostrils, mouth present.***
- iv) Abrasion 6 cm X 1 cm on medial side of left leg.***
- v) Abrasion 3 cm X 2 cm on medial side of left ankle.***
- vi) Abrasion 3 cm X 2 cm on medial side of right ankle.***
- vii) Abrasion 4 cm X 2 cm below right scapula.***
- viii) Abrasion 10 cm X 6 cm on posterior and lateral aspect of left upper arm.***
- ix) Multiple abrasions extending from left shoulder to left pelvis.***

On internal examination in the skull occipital bone found fractured. Membranes found ruptured at the site on injury No. 1. In the brain haemorrhage was present in the occipital cortex. Spinal cord not opened. Chambers of heart empty. Stomach empty. Small intestine empty. Faecal matter present in large intestine and bladder full. Liver was found weighing 1150 gms. Spleen - 170 gms. Kidney - 180 gms. In the opinion of the Medical Officer the cause of death was due to coma and syncope due to head injury and haemorrhage. It was also observed that death had occurred sometime one-two days prior to the postmortem.

4) On completion of the investigation, patti patwari submitted chargesheet (Ext. A –12) against appellant Baraf Singh for his trial for allegedly committing the offence punishable under Section 302 of the I.P.C. The concerned Magistrate on receipt of the chargesheet, after giving necessary copies to the accused (appellant), committed the case to the court of sessions for trial. The learned Sessions Judge, Tehri, on 21.01.1988 after hearing the parties, framed charge relating to offence punishable under Section 302 of the I.P.C. against the appellant Baraf Singh to which the appellant pleaded not guilty and claimed to be tried.

5) Thereafter, prosecution got examined P.W. 1, Govind Singh (eye witness); P.W. 2, Bhadu Singh (eye witness); P.W. 3, Asharh Singh (informant); P.W. 4, Jhupali Devi (mother of the deceased); P.W. 5, Dr. R.K. Pant (who conducted the postmortem examination); P.W. 6, Inder Dutt Dangwal (Patwari / Investigating Officer) and P.W. 7, Dr. B.C. Pandey (who examined the injuries on the person of the appellant).

6) The oral and documentary evidences on record were put to the appellant under Section 313 of the Cr.P.C., which he alleged to be false. No evidence in defence was adduced. After hearing the parties the learned Sessions Judge, Tehri found the appellant guilty of the offence punishable under Sections 302 of the I.P.C. and convicted and sentenced him as mentioned earlier. Aggrieved by which this appeal has been filed.

7) We heard learned counsel for the parties and perused the entire evidence on record.

8) First Information Report (Ext. A –1) read with copy of extract of the general diary (Ext. A –4) and check report (Ext.

A -3) shows that the First Information Report was lodged without unnecessary delay on the same day of the incident within the period of three hours.

9) Ante mortem injuries as mentioned earlier which include one lacerated wound on the head and seven abrasions read with the statement of Dr. R.K. Pant (P.W. 5) corroborate the prosecution story to the extent that the injuries were caused on the person of the deceased and that the death had probably occurred at about 06.00 P.M. on 12.08.1987.

10) The ocular evidence of the incident has been narrated by Govind Singh (P.W. 1) and Bhadu Singh (P.W. 2). P.W. 1 has stated on oath that on 12.08.1987, at about 06:00 P.M., when he was going from Khandogi to his village on the way he saw that appellant Baraf Singh was quarrelling with a person, who in order to save himself jumped down in another field whereupon appellant Baraf Singh threw a stone at him and ran away. He alongwith Rai Singh and Bhadu Singh (P.W. 2) went to see the injured and found that the said victim had already died. They identified him to be Vikram Singh. Vikram Singh (deceased) was bleeding from his head. Bhadu Singh (P.W. 2) also corroborated the statement of Govind Singh (P.W. 1). Bhadu Singh (P.W. 2) has stated that when Govind Singh told him that appellant is quarreling with someone both of them went towards the place of incident and saw appellant Baraf Singh running from the scene and Vikram Singh lying dead. This witness had also stated that the deceased was bleeding from his head. Asharh Singh (P.W. 3) has proved the first information report (Ext. A -1) which he had lodged on receiving the information from Rai Singh, who had seen the incident with Govind Singh (P.W. 1) and Bhadu Singh (P.W. 2). Dr. B.C. Pandey (P.W. 7), who had examined the injuries of the

appellant at 04:10 P.M. on 13.08.1987 after his arrest, found following injuries on his person:-

- i) Abrasion over the left eyebrow 0.25 cm X 0.75 cm. Redish in colour.
- ii) Abrasion over outer aspect of right forehead in an area of 18 cm X 6 cm, variable sizes and variable direction ranging from 1/10 cm X 1/10 cm to 1/10 cm x 1 cm., redish coloured.
- iii) Abrasion over right cheek 0.10 cm X 0.10 cm over the molar prominence area. Redish coloured.

Dr. B.C. Pandey (P.W. 7), the Medical Officer has proved this report (Ext. A -13) which corroborates the fact that appellant had a scuffle on the day of incident. P.W. 7 has stated that these injuries could have been caused to the appellant on 12.08.1987 at about 06.00 P.M.

11) P.W. 4, Jhupali Devi (mother of the deceased) has narrated the motive behind the crime. She states that before the incident, in which her son died, appellant Baraf Singh had purchased a she-buffalo from her and when she asked for remained payment of price, appellant gave threat to give a lesson to her and her son.

12) In view of above discussion from the evidence on record, it is proved beyond all reasonable doubt that the appellant has committed culpable homicide by causing death of Vikram Singh.

13) Learned counsel for the appellant argued that crime number is not mentioned in the extract of general diary, inquest report and site plan. However, merely non-mentioning of crime

number in the inquest report does not create any doubt as to the preparation of inquest report on 13.08.1987 at P.W. 5, Dr. R.K. Pant, who conducted autopsy on the dead body of the deceased on 14.08.1987 has stated that he received the dead body in sealed condition. Though the crime number is not mentioned in the site plan that by itself does not create any doubt as to the truthfulness of the prosecution story for the reason that it is only one site plan (Ext. A –9) in respect of crime in question which has been prepared on 13.08.1987 as stated by P.W. 6, Shri I.D. Dangwal, the Investigating Officer (Patwari).

14) The second submission made on behalf of learned counsel for the appellant is that independent witness Raj Singh has not been examined by the prosecution. It is not the quantity but the quality of witnesses which is important in a criminal case before the Court. The prosecution story as to commission of culpable homicide by the appellant was proved from the statements of eye witnesses namely, Govind Singh (P.W. 1) and Bhadu Singh (P.W. 4) which is corroborated by the ante mortem injuries as narrated by Dr. R.K. Pant (P.W. 5) apart from the corroboration of motive stated by Jhapuli Devi (P.W. 4). Not only this, from the statement of Dr. B.C. Pandey (P.W. 7) it is also corroborated that the appellant received certain injuries which appears to be the result of scuffle with the deceased as the witnesses had stated that appellant was grappling and fighting with the deceased before former hit the latter with a stone.

15) Shri Rajendra Kotyal, learned counsel for the appellant also argued that it is not clear whether the place of occurrence and Khandogi or Ratoli, as such the prosecution story cannot be stated to have been proved beyond reasonable doubt. Site plan (Ext. A –9) clearly shows that the place of occurrence falls within the limits of village Ratoli. Check report (Ext. A –3) of

the first information report also shows that the place of occurrence is within the limits of village Ratoli. None of the witnesses had stated the place of occurrence to be village Khandogi. Infact the patti patwari, Khandogi had the jurisdiction over the village Ratoli. Therefore, the argument of learned counsel for the appellant is misconceived.

16) However, a culpable homicide does not amount to murder if it is covered under exceptions mentioned in Section 300 of the I.P.C. Exception 4 to Section 300, Indian Penal Code reads as under:-

“Culpable homicide is not murder if it is committed without premeditation in a sudden fight in the heat of passion upon a certain quarrel and without the offender having taken undue advantage or acted in a cruel or unusual manner.”

In the present case, appellant was not armed with any deadly weapon. From the statements of the witnesses what appears is that the appellant and deceased were grappling and fighting and in that sequence when the deceased jumped down in another field the appellant threw a stone which hit the deceased on his head. It is settled principle of law that Section 304 Part II gets attracted when it is proved that even if the accused had no intention to cause such bodily injury as was likely to cause death but had the knowledge that the injury was likely to cause the death. In the case of ***Madhusudan Sathpathy and others V. State of Orrisa reported in 1995 Supreme Court Cases (Cri) 155***, it was held that when the accused was found to have cause the death of deceased in scuffle and medical evidence show only one fatal injury on the head of the deceased and other injuries were simple in nature, then the accused had only knowledge that injury inflicted by him was likely to cause death and had no intention to cause death. In view of the principle of

law laid down in the said case, in the present case, the accused (appellant) should have been convicted only under Section 304 Part II and not under Section 302 of the I.P.C.

17) Therefore, we are of the opinion that the appeal deserves to be allowed partly. And is partly allowed. Appellant Baraf Singh is convicted under Section 304 Part II instead of Section 302 of the I.P.C. and sentenced to undergo five years rigorous imprisonment. Accordingly, the impugned judgment and order dated 01.09.1988 is modified. The appellant shall be taken into custody by the court concerned to serve out the sentence as modified and compliance report to be submitted to the Court in two months.

(Prafulla C. Pant, J.) (Irshad Hussain, J.)

Dt: 9th May, 2005.
H.Negi